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No. 52.

Supreme Court of the United States.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

Filed Aug. 16, 1900.

OCTOBER TERM, 1900.

No. 52.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of THE NEW YORK CLEARING HOUSE BUILDING COMPANY,

Plaintiff in Error,

against

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York.

Brief,

for Plaintiff in Error.

(TAXES OF 1897.)

WILLIAM S. OPDYKE,
DAVID WILLCOX,
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Supreme Court of the United States.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the NEW YORK CLEARING HOUSE BUILDING COMPANY, Plaintiff in error,

AGAINST

EDWARD P. BARKER, THEODORE SUTRO and JAMES L. WELLS, Commissioners of Taxes and Assessments of the City and County of New York,

No. 52
October Term, 1900.
(Taxes of 1897)

BRIEF,
for plaintiff in error.

Upon July 14, 1897, a writ of *certiorari* was duly sued out in the New York Supreme Court pursuant to the provisions of the Tax Law of 1896, (Chapter 908, sections 250, 251), and of the Consolidation Act (Laws of 1882, Chap. 410, Sec. 821) by the New York Clearing House Building Company to review the action of the Commissioners of Taxes and Assessments of the City and County of New York in assessing the relator upon its personal property (p. 22) for the year 1897 for the sum of $236,683. At the Special Term the writ was dismissed without opinion (p. 23). The relator appealed (p. 24) to the Appellate Division of the Supreme Court which affirmed the judgment of the Special Term without opinion (p. 25; 36 App. Div., 636). The relator then appealed to the Court of Appeals (p. 26) which affirmed the judgment without opinion (p. 2; 158 N. Y., 709). The relator thereupon sued out this writ of error (pp. 28–30).

STATEMENT.

Pursuant to law the relator duly filed with the Commissioners a statement showing its condition for the purpose of assessment for the year 1897 (pp. 8, 9, 19, 20). This showed that the relator had personal property amounting to $29,953.99 and that its indebtedness amounted to $230,000. The relator was entitled to have these debts deducted from any assessment against it for personal property (People *ex rel.* Second Avenue R. R. Co. vs. Barker, 141 N. Y., 196; People *ex rel.* Cornell Steamboat Co. vs. Dederick, 161 N. Y., 195). The relator's debts accordingly exceeded the total amount of its personal property by the sum of $200,046.01.

The difference between the relator and the Commissioners arose from the ownership by the relator of a single parcel of real estate. Under the statutory provision requiring that they assess the same at its full value (Tax Law, Sec. 21, subdiv. 3, *infra*, p. 4) or, in the terms of the Consolidation Act (Laws of 1882, Chap. 410, Sec. 814, *infra*, p. 4), the sum for which such property under ordinary circumstances would sell, the Commissioners had already assessed this parcel of real estate for the year 1897 at $600,000 (pp. 9, 19). In the aforesaid statement for the purpose of assessment the relator stated this sum of $600,000 as the value of the real estate in question (pp. 8, 19).

The Commissioners disregarded this statement and also the fact that they had just found the full value (Tax Law, Sec. 21, subdiv. 3) —the sum for which said property under ordinary circumstances would sell (Consolidation Act, § 814)—of this parcel of real estate to be $600,000, and, without any reason therefor which appears in the return, found that its actual value was its cost to the relator, namely $1,036,728.66 (p. 17). The Commissioners were thus in the position of finding that the full value (Tax Law, Sec. 21, subdiv. 3) of this real estate was $600,000 and that its actual value was $1,036,728.66. The difference between these sums was $436,728.66. From this the Commissioners deducted the relator's indebtedness over and above the amount of its personal property as above stated, namely, $200,046.01. The remainder was $236,682.65. The Commissioners assessed the relator in that amount—or for round figures, $236,683—upon its taxable personal property in this City (p. 22).

This case arose under the present Tax Law (Laws of 1896, Chapter 908). The action of the Commissioners was based upon the claim that real property owned by corpora-

tions is assessable differently from that owned by individuals. The section upon which this claim rests (Tax Law, Sec. 12, *infra*, p. 4) provides that, "the capital stock of every company liable to taxation, "except such part of it as shall have been excepted in the assess- "ment roll or shall be exempt by law, together with its surplus "profits or reserve funds exceeding ten per centum of its capital "after deducting the assessed value of its real estate, and all "shares of stock in other corporations actually owned by such "company which are taxable upon their capital stock under the "laws of this state, shall be assessed at its actual value." It is settled that this is not a franchise tax but merely a tax upon the property of the corporation exclusive of its franchises. (People *ex rel.* Union Trust Co. vs. Colman, 126 N. Y. 433. People *ex rel.* Manhattan Co. vs. Barber 146 N. Y. 304, 312; S. C. 152 N. Y., 417, 453.)

An individual who owns real estate is, of course, assessable upon the same merely as real estate; but the claim of the Commissioners is that a corporation owning the same real estate is assessable not merely upon the same as real estate, but also upon the margin of difference between the assessed and the actual value of its real estate as personal property. The relator claimed before the Commissioners (pp. 11, 21) and in its petition for the writ of *certiorari* (p. 6) that this construction of the statute was contrary to the Constitution because it denied to the relator the equal protection of the laws, and it has constantly insisted upon that claim.

The record contains a full assignment of errors setting forth this claim (p. 31). The terms thereof are the same as those of the assignment of error in No. 51 argued herewith. By reason of the fact that a revision of the tax laws of the state took place in the meantime resulting in the tax law (Laws of 1896, chap. 908, *infra*, p. 4), the statutes controlling the two cases vary slightly. The Federal question in the two cases is, however, the same.

The present case is, therefore, submitted on the argument contained in the brief in No. 51 which it seems unnecessary to repeat. For the reasons therein stated, the judgment should be reversed.

WILLIAM S. OPDYKE,
DAVID WILLCOX,
Counsel for plaintiff in error.

STATUTES OF THE STATE OF NEW YORK.

Tax Law, Laws of 1896, Chapter 908, Sec. 9.

When real property is owned by a resident of a tax district in which it is situated, it shall be assessedto him.

Id. Sec. 21.

They (the assessing officers) shall prepare an assessment roll containing five separate columns and shall according to the best information in their power set down * * *

2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column, the full value of such real property.

Id. Sec. 12.

The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

Consolidation Act, Chapter 410, Laws of 1882, Sec. 814.

It shall be the duty of the deputy tax commissioners, under the direction of the commissioners of taxes and assessments, to assess all the taxable property in the several districts that may be assigned to them for that purpose by said commissioners, and they shall furnish to them, under oath, a detailed statement of all such property showing that said deputies have personally examined each and every house, building, lot, pier, or other assessable property, giving the street and ward map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known ; also, in their judgment, the sum for which such property, under ordinary circumstances, would sell, with such other information, in detail, relative to personal property or otherwise, as the said commissioners may, from time to time, require. Such deputies shall commence to assess real and personal estate on the first Monday of September in each and every year.